

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Application of  
Michael Lauen for an Insurance  
Producer's License

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came before Administrative Law Judge Jeanne M. Cochran on April 11, 2013 for a hearing at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The record closed on April 11, 2013 at the conclusion of the hearing.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Michael Lauen (Applicant) appeared on his own behalf and without counsel.

**STATEMENT OF THE ISSUES**

1. Has Mr. Lauen been convicted of a crime involving moral turpitude, in violation of Minn. Stat. § 60K.43, subd. 1(6)?
2. Has Mr. Lauen demonstrated untrustworthiness, as provided in Minn. Stat. § 45.027, subd. 7?
3. Should Mr. Lauen's application for an insurance producer's license be denied?

The Administrative Law Judge concludes that the record demonstrates that Mr. Lauen has been convicted of a crime involving moral turpitude. In addition, Mr. Lauen has failed to meet his burden to show the license should be granted. Therefore, the Administrative Law Judge respectfully recommends that the Commissioner of the Department of Commerce **AFFIRM** the denial of Michael Lauen's application for an insurance producer's license.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Michael Lauen is a 52-year-old man, who resides in Eden Prairie, Minnesota.<sup>1</sup>

2. In 1997, Mr. Lauen was convicted of felony theft by swindle in Hennepin County, Minnesota. The conviction arose from embezzlement at a healthcare administration company.<sup>2</sup>

3. While employed at the company, Mr. Lauen submitted claims for reimbursement of health care services that were never provided.<sup>3</sup> The total amount of the fraudulent claims submitted by Mr. Lauen exceeded \$89,000.00.<sup>4</sup>

4. On January 16, 2013, Mr. Lauen filed an application with the Department to become a licensed insurance producer in the State of Minnesota.<sup>5</sup> A licensed insurance producer is the statutory term for an insurance agent.<sup>6</sup>

5. The Department application required Mr. Lauen to provide information regarding his criminal history.<sup>7</sup>

6. After reviewing Mr. Lauen's application, the Department notified Mr. Lauen of its intent to deny his application based on his 1997 conviction of felony theft by swindle. Because insurance producers handle client funds and have access to client bank account numbers, the Department determined that Mr. Lauen's conviction of felony theft by swindle made him untrustworthy.<sup>8</sup>

7. At the hearing, Mr. Lauen did not dispute that he was convicted of felony theft by swindle in 1997. Instead, he explained that, at the time of his illegal activity, he was dealing with a gambling issue and a drug issue. He stated that he no longer gambles and is now sober.<sup>9</sup>

8. Mr. Lauen also stated that, since the conviction in 1997, he has been trustworthy and held a job up until last year. He has had stable employment in the commercial real estate industry as an assistant property manager.<sup>10</sup>

9. Mr. Lauen applied for the insurance producer's license because he was approached by an insurance company based in Iowa. Mr. Lauen informed the Iowa

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<sup>1</sup> Ex. 1; Notice of Appearance of Michael Lauen.

<sup>2</sup> Exs. 3-4.

<sup>3</sup> Ex. 3.

<sup>4</sup> Ex. 3.

<sup>5</sup> Ex. 1.

<sup>6</sup> Testimony of Cheryl Costello, Senior Investigator, Department of Commerce.

<sup>7</sup> Ex. 1.

<sup>8</sup> Test. of C. Costello.

<sup>9</sup> Test. of Michael Lauen.

<sup>10</sup> *Id.*

company about his 1997 conviction. The company would still like to hire him. Mr. Lauen stated that the Iowa company believes he is trustworthy.<sup>11</sup>

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against the Applicant, Mr. Lauen, under Minn. Stat. §§ 14.50, 45.027, subd. 7(b), and 60K.43, subd. 2(a).

2. The Applicant received due, proper, and timely notice of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden of proof in this proceeding is on the Applicant to show by a preponderance of the evidence that he should be granted a license.<sup>12</sup>

5. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty if the applicant or licensee pleads guilty or is convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct.<sup>13</sup>

6. Moral turpitude is defined as an act of "baseness, vileness or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rules of right and duty between man and man," and an "[a]ct or behavior that gravely violates moral sentiment or accepted moral standards of (the) community." In a criminal context, moral turpitude refers to the "quality of a crime involving grave infringement of moral sentiment of the community . . . ."<sup>14</sup>

7. Mr. Lauen's conviction of felony theft by swindle is a crime involving moral turpitude within the meaning of Minn. Stat. § 60K.43, subd. 1(6).

8. Minn. Stat. § 45.027, subd. 10, specifies that "Chapter 364 [relating to rehabilitation of those convicted of crimes] does not apply to an applicant for a license

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<sup>11</sup> *Id.*

<sup>12</sup> Minn. R. 1400.7300, subp. 5.

<sup>13</sup> Minn. Stat. § 60K.43, subd. 1(6) (2012).

<sup>14</sup> *Black's Law Dictionary* (6<sup>th</sup> Ed. 1990), at 1008-09. The term is not defined in the statutes and rules governing licenses issued by the Commissioner of Commerce. In *In re Application for Discipline of Bunker*, 294 Minn. 47, 199 N.W.2d 628 (Minn. 1972), the Minnesota Supreme Court cited with approval a Wisconsin case (*State v. McCarthy*, 255 Wis. 234, 38 N.W.2d 679 (Wis. 1949)) setting forth similar definitions of "moral turpitude."

... where the underlying conduct on which the conviction is based would be grounds for denial of the license.”

9. The Applicant’s prior criminal conviction relates directly to the occupation for which the license is sought, due to the nature of the crime and the relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation. The occupation of a resident insurance producer (agent) requires trustworthiness, especially in matters involving the handling of client properties and money.

10. While the Applicant claims that he is currently trustworthy, denial of the Applicant’s insurance producer’s license application is authorized by law because of his 1997 conviction for felony theft by swindle.<sup>15</sup>

11. Denial of the Applicant’s insurance producer’s license application is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the Commissioner of the Department of Commerce AFFIRM the denial of Michael Lauen’s application for an insurance producer’s license.

Dated: May 6, 2013

s/Jeanne M. Cochran  
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JEANNE M. COCHRAN  
Administrative Law Judge

Reported: Digitally Recorded  
No transcript prepared

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<sup>15</sup> Minn. Stat. § 60K.43, subd. 1(6).

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Melissa Knoepfler Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 296-2715, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

The Department alleges that the Applicant is not entitled to a resident insurance producer's license because he was convicted of felony theft by swindle. The Department contends that this conviction disqualifies the Applicant because it involves "moral turpitude." As noted above, Minn. Stat. § 60K.43, subd. 1(6), specifies that the Commissioner of Commerce may deny an application for a resident insurance producer's license if the Commissioner finds that it is in the public interest to do so and the applicant has "pled guilty . . . or been convicted of a felony . . . involving moral turpitude, including, but not limited to, assault or similar conduct."<sup>16</sup>

Moral turpitude is not defined in the statutes or rules governing licenses issued by the Commissioner of Commerce. Black's Law Dictionary defines "moral turpitude" as an "[a]ct of baseness, vileness or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rules of right and duty between man and man," and as an "[a]ct or behavior that gravely violates moral sentiment or accepted moral standards of (the) community." In a criminal context, moral turpitude refers to the "quality of a crime involving grave infringement of

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<sup>16</sup> Minn. Stat. § 60K.43, subd. 1(6).

moral sentiment of the community . . . .”<sup>17</sup> In *Jordan v. De George*, 341 U.S. 223 (1951), the Supreme Court held, in the context of the federal deportation statute, that crimes involving any type of fraudulent conduct demonstrate “moral turpitude.” Because the Applicant’s crime of felony theft by swindle involved fraud, it is a crime of “moral turpitude” within the meaning of Minn. Stat. § 60K.43.

The Applicant does not dispute that he was convicted of a crime of “moral turpitude” in 1997. Rather, he alleges that he should be given a second chance because he is now trustworthy. Chapter 364 of the Minnesota Statutes declares that “it is the policy of the state of Minnesota to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship” and notes that the “opportunity to . . . engage in a meaningful and profitable . . . occupation . . . is essential to rehabilitation and the resumption of the responsibilities of citizenship.”<sup>18</sup> Chapter 364 generally states that a person cannot be disqualified from pursuing a licensed occupation due to prior conviction of a crime unless the crime directly relates to the occupation for which the license is sought.<sup>19</sup> If the crime is, in fact, directly related to the occupation for which a license is sought, the person cannot be disqualified if he or she can show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the occupation.<sup>20</sup>

Neither insurance licenses nor occupations licensed by the Department of Commerce are expressly exempted from Chapter 364.<sup>21</sup> Minn. Stat. § 45A.027, subd. 10, states, however, that Chapter 364 does not apply to an applicant where the underlying conduct on which the conviction was based would be grounds for denial of the license. Although this language is somewhat unclear, it appears to reflect legislative intent that an applicant for Commerce Department licensure who has committed a crime that directly relates to the licensed occupation cannot provide evidence of rehabilitation to overcome a disqualification from licensure.

The Administrative Law Judge concludes that the Applicant’s 1997 crime of felony theft by swindle constitutes a crime involving “moral turpitude” within the meaning of the statute. In addition, because Applicant’s crime involved theft by submitting fraudulent claims for reimbursement, the Applicant’s past conviction directly relates to

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<sup>17</sup> *Black’s Law Dictionary* (6<sup>th</sup> Ed. 1990), at 1008-09. In *In re Application for Discipline of Bunker*, 294 Minn. 47, 199 N.W.2d 628 (Minn. 1972), the Minnesota Supreme Court cited with approval a Wisconsin case (*State v. McCarthy*, 255 Wis. 234, 38 N.W.2d 679 (Wis. 1949)) setting forth similar definitions of “moral turpitude.”

<sup>18</sup> Minn. Stat. § 364.01.

<sup>19</sup> Minn. Stat. § 364.03, subd. 1.

<sup>20</sup> Minn. Stat. § 364.03, subd. 3.

<sup>21</sup> See Minn. Stat. §§ 364.02, subd. 3 (defining the term “license” to include all licenses issued by the State of Minnesota before a person can engage in any occupation and defining the term “hiring or licensing authority” to mean state agencies or departments), and 364.09 (exempting the licensing process for peace officers, private detectives, school bus drivers, special transportation services, commercial driver training instructors, emergency medical services personnel, physicians, taxicab drivers, juvenile corrections employment, and teachers, and specifying that the Chapter does not apply to law enforcement agencies, fire protection agencies, and school districts).

the occupation of insurance producer.<sup>22</sup> While the Applicant is to be commended for improving his life since 1997, Minn. Stat. § 60K.43 gives the Commissioner the authority to deny a license application based on the Applicant's prior conviction. For these reasons, the Administrative Law Judge cannot conclude that the Applicant has met his burden to show the license should be granted.

**J. M. C.**

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<sup>22</sup> See Ex. 1; Test. of C. Costello.